

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 08-25 (RHK/SRN)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	PLEA AGREEMENT AND
v.)	SENTENCING STIPULATIONS
)	
KEVIN LYDELL BROWN, JR.,)	
a/k/a Kevin Lydale Brown, Jr.,)	
a/k/a Kevin Lyndale Brown,)	
)	
Defendant.)	

The United States by its attorneys, Frank J. Magill, Jr., Acting United States Attorney for the District of Minnesota, and Tracy L. Perzel, Assistant United States Attorney, and the defendant, Kevin Lydell Brown, Jr. (a/k/a Kevin Lydale Brown, Jr., a/k/a Kevin Lyndale Brown), with his attorney, Eric Newmark, Esq., hereby agree to dispose of this case on the terms and conditions that follow. This plea agreement is binding only on the defendant and the United States Attorney's Office for the District of Minnesota. This agreement is not binding upon any other United States Attorney's Office or any other federal or state agency.

1. Charges. The defendant agrees to plead guilty to counts 1 and 3 of the Superseding Indictment. Count 1 alleges that on or about January 5, 2008, in the State and District of Minnesota, the defendant, knowingly and intentionally possessed with intent to distribute approximately 246 grams of a mixture and substance containing cocaine base (crack), a controlled substance, in

violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A).

Count 3 alleges that on or about January 5, 2008, in the State and District of Minnesota, the defendant, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, namely, assault in the third degree in Hennepin County, Minnesota, in or about 2007, thereafter did unlawfully and knowingly possess in and affecting interstate commerce, a firearm, that is, a Baikal, model IJ70, 9mm, semiautomatic pistol, with serial number J038511, manufactured by Izhevsky Mechanicheskoy Zavod, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

Count 2 will be dismissed at sentencing.

2. Factual Basis. The defendant agrees to the following facts and further agrees that, were this matter to go to trial, the United States would prove the following facts beyond a reasonable doubt:

a. On or about January 5, 2008, law enforcement was called to apartment #303 at 10320 Devonshire Circle in Bloomington, the State and District of Minnesota, on the report of a domestic incident at that location. The defendant was staying at this apartment with I.O. When law enforcement entered the apartment, they found a backpack containing 246 grams of cocaine base ("crack" cocaine or cocaine hydrochloride) packaged in one-ounce quantities;

a Baikal, model IJ70, 9mm, semiautomatic pistol that had one round in the chamber and was loaded with a magazine containing eight rounds; an additional magazine containing four rounds; and approximately \$13,393 in U.S. currency.

b. The backpack and the items within it belonged to the defendant, and he knowingly, intentionally, and voluntarily possessed all of them. Specifically, the defendant possessed the crack cocaine intending to distribute it. The defendant used the firearm to further his possession and distribution of the crack cocaine.

c. In the apartment, law enforcement also recovered a digital scale and items indicative of the process for "cooking" powder cocaine into crack cocaine. The defendant knowingly and intentionally possessed these items and engaged in the process of cooking powder cocaine into crack cocaine and of packaging it for distribution.

d. The defendant was convicted of the felony offense of assault in the third degree, a crime punishable by a term of imprisonment of more than one year. The conviction was entered in Hennepin County, Minnesota, in or about 2007, and before the date of the instant offense.

e. The defendant knew his actions violated the law.

3. Statutory Penalties. The parties agree that Counts 1 and 3, as charged in the superseding indictment and to which the defendant is pleading guilty, carries statutory penalties of:

Count 1

- a. a mandatory minimum of ten years imprisonment;
- b. a maximum of life years imprisonment;
- c. a fine of up to \$4,000,000;
- d. a supervised release term of at least five years;
- e. a mandatory special assessment of \$100; and
- f. possible denial of federal benefits under 21 U.S.C. § 862(a)(1).

Count 3

- a. a maximum of 10 years imprisonment;
- b. a fine of up to \$250,000;
- c. a supervised release term of up to three years;
- d. a mandatory special assessment of \$100; and
- e. possible denial of federal benefits under 21 U.S.C. § 862(a)(1).

4. Revocation of Supervised Release. The defendant understands that if he were to violate any condition of supervised release, he could be sentenced to an additional term of imprisonment up to the length of the original supervised release terms, subject to the statutory maximums set forth in 18 U.S.C. § 3583.

5. Guideline Calculations. The parties have stipulated to the following sentencing factors with the understanding that the United States Sentencing Guidelines are advisory and not mandatory. The parties' stipulations are binding on them but are not binding upon the Court. If the Court determines the sentencing factors to be different from those set forth below, the defendant shall not be entitled to withdraw from the plea agreement.

a. Base Offense Level.

(1) Count 1: 32, for 246 grams of crack cocaine (U.S.S.G. § 2D1.1 Drug Quantity Table; U.S.S.G. § 2D1.1 Commentary, n.10(D).)

(2) Count 3: 24, for possessing the firearm after sustaining at least two felony convictions of either a crime of violence or a controlled substance offense. (U.S.S.G. § 2K2.1(a)(2).)

b. Specific Offense Characteristics.

(1) Count 1: 2, for possessing a dangerous weapon (U.S.S.G. § 2D1.1(b)(1).)

(2) Count 3: 2, if the firearm was stolen (U.S.S.G. § 2K2.1(4)(A)); 4, for possession in connection with another felony offense (U.S.S.G. § 2K2.1(6)).

(3) The parties agree that no other specific offense characteristics apply. (U.S.S.G. §§ 2D1.1(b)(2-11), 2K2.1(b)(1-3, 5, 7).)

c. Chapter 3 Adjustments. The parties agree that no chapter 3 adjustments apply in this case.

d. Acceptance of Responsibility. The government will recommend that the defendant receive a two-level reduction for acceptance of responsibility and will move for an additional one-level reduction, provided he: (1) testifies truthfully during the change of plea hearing; (2) provides full, complete, and truthful disclosures to the United States Probation Office; and (3) engages in no other conduct which is inconsistent with acceptance of responsibility before the time of sentencing. U.S.S.G. §§ 3E1.1(a), 3E1.1(b). Whether there will be a reduction for acceptance of responsibility will be determined by the Court in its discretion.

e. Total Offense Level.

(1) Count 1: 31 (32+2-3).

(2) Count 3: 29 (26+2+4-3).

f. Grouping. Offenses covered by guidelines §§ 2D1.1 and 2K2.1 are to be grouped. (U.S.S.G. § 3D1.2(d).) For counts so grouped, the resulting offense level is the highest offense level of the counts grouped after determining the offense level for each count. (U.S.S.G. § 3D1.2(b); Commentary, U.S.S.G. § 3D1.3, n.3.) Here, the highest total offense level is 31.

g. Criminal History Category. Based on information available at this time, the parties believe the defendant's

criminal history category is III or IV. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. The defendant's actual criminal history and related status will be determined by the Court based on the information presented in the Presentence Report and by the parties at the time of sentencing. If the defendant's criminal history category, as finally computed with the aid of the Presentence Report is other than category III or IV, neither party may withdraw from the plea agreement based upon that ground.

h. Guideline Range. Based on a total offense level of 31 and a criminal history category of III, the guidelines range is 135-168 months. A criminal history category of IV increases this range to 151-188 months.

i. Fine Range. The parties understand that it shall be the judgment of the Court as to whether a fine shall be imposed upon the defendant. With a total offense level of 31, the guidelines fine range is \$15,000 to \$4,000,000. (U.S.S.G. § 5E1.2.)

j. Supervised Release.

(1) Count 1: at least five (5) years. (U.S.S.G. § 5D1.2(a)(1); 21 U.S.C. § 841(b)(1)(A).)

(2) Count 2: at least two but not more than three years. (U.S.S.G. § 5D1.2(a)(2).)

6. Discretion of the Court. The foregoing stipulations are binding on the parties, but do not bind the court. The parties understand that the application of the Sentencing Guidelines is a matter that falls solely in the Court's discretion. The Court may make its own determination regarding the applicable guidelines factors and the applicable criminal history category. If the Court determines that the applicable guidelines calculations or the defendant's criminal history category is different from that stated above, the defendant may not withdraw from this agreement, and the defendant will be sentenced pursuant to the Court's determinations.

7. Special Assessment. Title 18, United States Code, Section 3013 and the Guidelines require payment of a special assessment in the amount of \$100.00 for each felony count for which the defendant is convicted. (18 U.S.C. § 3013(a)(2)(A); U.S.S.G. § 5E1.3). The defendant agrees to pay the special assessment of \$200 before sentencing.

8. Waiver of Appeal and Collateral Attack. The defendant understands that 18 U.S.C. § 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this right, and in exchange for the concessions made by the United States in this plea agreement, the defendant hereby waives all rights conferred by 18 U.S.C. § 3742 to appeal his sentence, unless the total sentence imposed exceeds 188 months. In addition, the defendant expressly waives the right to petition under 28 U.S.C. §

2255. The defendant has discussed these rights with the defendant's attorney. The defendant understands the rights being waived, and the defendant waives these rights knowingly, voluntarily and intelligently.

9. Complete Agreement. This Plea Agreement and Sentencing Stipulations accurately contains the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

Dated: FRANK J. MAGILL, JR.
Acting United States Attorney

BY: TRACY L. PERZEL
Assistant United States Attorney

Dated: _____
KEVIN LYDELL BROWN, JR.
a/k/a Kevin Lydale Brown, Jr.
a/k/a Kevin Lyndale
Defendant

Dated: _____
ERIC NEWMARK, ESQ.
Attorney for Defendant